

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**Dommicita Allen, Brian Allison, Duane Allison, Melvin Andre, Alvis Ashihi, Calvin Arviso, Herman Attcity, Christina Aspaas, Orville Arvito, Melvin Barber, Calvin L. Barder, Larry Badonie, Nelson Bee, Derrick Begay, Harry Begay, Shirley Begay, Harlan C. Begaye, Harold Begay, Robert Bekis, Stanley Bekis, Bob Begay, Melvin Begay, Russell Begay, Curtis Begay, Susie Benally, Harry Benally, Harold Benally, Harris Benally, Gilbert Benally, Jerry H. Benally, Norman D. Benally, Wilson L. Billie, Tom Blackwater, John H. Blueeyes, Leo Bonney, Gabriel Bradley, Dave R. Bruce, Gillison Bunny, Patrick Burns, Christopher J. Cambridge, Ernest E. Charley, Herbert Charley, Billy Clyde, Ben C. Cogan, Jimmie Coolidge, Jerrod Corley, Emma J. Curley, Levi J. Curtis, Gilbert K. Dee, Cecil Deswood, Cecil Duncan, Cornell Edsitty, LeRae Ellison, Latasha Garnenez, Nelvin Garnanez, Judy Gilmore, Janet Gilmore, Loretta Grimsley, Bobby Griffith, Charleson Harris, Clifford Harris, Delbert K. Harris, Harvey Harris, Manuelito Harrison, Nora Harrison, Sandy House, Lee Henderson, Jerrold Hogue, Ronald Hogue, Diane Hoskie, David Howard, Larry Howard, Richard Howard, Darrell James, Jennifer Jake, Tony John, Autumn Harvey, Bob Jaymes, Harrison Jim, Wilford Joe, David Johnson, Victoria Kieyoomoa, Alden King, Tony Kinney, Jr., Gilbert Kinney Sr., Phillip Lausney, Sandra Lamone, Benjamin Lee, Albert Lee, Alfred Lee, Anderson Lee, James Lee, Myrtle Lee, Rafuin Lee, Wallace Lewis, Marietta Lister, Ronald J. Loveland, Andrew Lowe, Vidal Luna, Leander May, Leroy Max, Kay May, Jay Mason, Karen Mason, Feliz Martinez, Johnny Mike, Sherwood Moore, Corenca**

**Jackson, Joey Nakai, Darryle A. Nelson, Sr., Judy Nez, Larry Palmer, Frank Peter, Fred Peter, Lee Phoenix III, Karlen Pioche, Jones Paul, Raymond Paul, Al Rockwell, Jacqueline Roy, Lawrence Sammons, Victoria Samuel, Eddie Smiley, Tom Seitz, Larry Smith, Jerome Smith, Vernon Smith, Glenn A. Sudjadi, Jimmie Tree, Marie Teasyatwho, Herman Tellez, Terry Thompson, Raymond Tso, Jerry Todacheene, Kee M. Tsosie, Larry B. Tsosie, Ralph Valentine, Pat Walters, Leonard Willie, Kee White, Phoebe White, Barnabas Willie, Delvin Williams, Sr., Charles Yazzie, Calvin B. Yazzie, Curtis Yazzie, Freddie Yazzie, Harrison Yazzie, Mark Yazzie, Sharon Yazzie, Terralynn Yazzie, Vince Yazzie, Wilson Yazzie, Gary Yellowman,**

**Plaintiffs,**

**vs.**

**No. 09-CV-00692**

**BHP NAVAJO COAL COMPANY, a Delaware Corporation, SAN JUAN COAL COMPANY, a Delaware Corporation.**

**Defendants.**

**Jury Demanded**

**FAIR LABOR STANDARDS ACT COMPLAINT**

COME NOW Plaintiffs, by and through their counsel, **YOUTZ & VALDEZ, P.C.** (Shane Youtz and Brandt Milstein), and for their complaint against Defendants allege as follows:

1. Plaintiffs, Dommicita Allen, Brian Allison, Duane Allison, Melvin Andre, Alvis, Ashihi, Calvin Arviso, Herman, Attcity, Christina Aspaas, Orville Arvito, Melvin Barber, Calvin L.

Barder, Larry Badonie, Nelson Bee, Derrick Begay, Harry Begay, Shirley Begay, Harlan C. Begaye, Harold Begay, Robert Bekis, Stanley Bekis, Bob Begay, Melvin Begay, Russell Begay, Curtis Begay, Susie Benally, Harry Benally, Harold Benally Harris Benally, Gilbert Benally, Jerry H. Benally, Norman D. Benally, Wilson L. Billie, Tom Blackwater, John H. Blueeyes, Leo Bonney, Gabriel Bradley, Dave R. Bruce, Gillison Bunny, Patrick Burns, Christopher J. Cambridge, Ernest E. Charley, Herbert Charley, Billy Clyde, Ben C. Cogan, Jimmie Coolidge, Jerrod Corley, Emma J. Curley, Levi J. Curtis, Gilbert K. Dee, Cecil Deswood, Cecil Duncan, Cornell Edsitty, LeRae Ellison, Latasha Garnenez, Nelvin Garnanez, Judy Gilmore, Janet Gilmore, Loretta Grimsley, Bobby Griffith, Charleson Harris, Clifford Harris, Delbert K. Harris, Harvey Harris, Manuelito Harrison, Nora Harrison, Lee, Sandy House, Henderson, Jerrold Hogue, Ronald Hogue, Diane Hoskie, David Howard, Larry Howard, Richard Howard, Darrell James, Jennifer Jake, Tony John, Autumn Harvey, Bob Jaymes, Harrison Jim, Wilford Joe, David Johnson, Victoria Kieyoomoa, Alden King, Tony Kinney, Jr., Gilbert Kinney Sr., Phillip Lausney, Sandra Lamone, Benjamin Lee, Albert Lee, Alfred Lee, Anderson Lee, James Lee, Myrtle Lee, Rafuin Lee, Wallace Lewis, Marietta Lister, Ronald J. Loveland, Andrew Lowe, Vidal Luna, Leander May, Leroy Max, Kay May, Jay Mason, Karen Mason, Feliz Martinez, Johnny Mike, Sherwood Moore, Corenca Jackson, Joey Nakai, Darryle A. Nelson, Sr., Judy Nez, Larry Palmer, Frank Peter, Fred Peter, Lee Phoenix III, Karlen Pioche, Jones, Paul, Raymond Paul, Al Rockwell, Jacqueline Roy, Lawrence Sammons, Victoria Samuel, Tom Eddie Smiley, Seitz, Larry Smith, Jerome Smith, Vernon Smith, Glenn A. Sudjadi, Jimmie Tree, Marie Teasyatwho, Herman Tellez, Terry Thompson, Raymond Tso, Jerry Todacheene, Kee M. Tsosie, Larry B. Tsosie, Ralph Valentine, Pat Walters, Leonard Willie, Kee White, Phoebe White, Barnabas Willie, Delvin Williams, Sr., Charles Yazzie, Calvin B. Yazzie,

Curtis Yazzie, Freddie Yazzie, Harrison Yazzie, Mark Yazzie, Sharon Yazzie, Terralynn Yazzie, Vince Yazzie, Wilson Yazzie, Gary Yellowman, are current and former employees of Defendant BHP Navajo Coal Company (BHP), are suing to recover back pay and penalties as a result of Defendant's failure to pay employees for all hours worked and for Defendant's failure to pay overtime wages as required by law.

2. Plaintiffs bring this action under state wage and hour laws and the FLSA (29 U.S.C. § 201 et seq.).

### **Jurisdiction and Venue**

3. Defendants, BHP Navajo Coal Company and San Juan Coal Company do business in New Mexico, by conducting mining operations in the Farmington, New Mexico area. Defendants are Delaware Corporations licensed to do business in New Mexico.

### **General Allegations**

4. Plaintiffs are coal miners performing work for Defendants, which conducting mining operations in Northern New Mexico. Both before and after the beginning of their work shifts, Plaintiffs perform work for which they are not compensated.

5. During the time of their employment with Defendants, Plaintiffs are or were non-exempt employees paid by the hour and were entitled to receive one and one-half times their hourly rate for work beyond forty hours per week under state and federal law. Plaintiffs and other employees were employed by Defendants and did perform work for Defendants in the last three years.

6. Defendants willfully and repeatedly failed to pay Plaintiffs and other employees for all of the time they worked and also failed to pay wages at an overtime rate for hours worked in

excess of forty in a workweek.

7. At the beginning of the workday, Plaintiffs are directed to report to work at least 15 minutes prior to their shift starting time, during which time Plaintiffs perform work which includes taking instruction from members of management who provide safety instructions and other work directions. Defendants', by their actions, during this time period, begin the work day. After several minutes of work instruction, employees are transported to their workplace. Defendant, in violation of the FLSA, has failed to pay its employees for this work time.

8. At the end of the workday, Plaintiffs are transported back to a central location, at which time they perform additional work for the employer, which is also not compensated. Defendants, in violation of the FLSA, have failed to pay their employees for this work time.

#### **Count I – Violation of State Wage and Hour Laws**

9. Plaintiffs incorporate herein the previous allegations of this complaint.

10. Plaintiffs were not paid all wages due to them on their regular paydays, in violation of New Mexico Statute 50-4-1 through 50-4-30.

11. As a direct and proximate result of Defendants' failure to pay wages, Plaintiffs have suffered damages in the forms of lost wages and lost use of such wages.

#### **Count II – Violation of the FLSA (29 U.S.C. § 201 et seq.)**

12. Plaintiffs incorporate herein the previous allegations of this complaint.

13. In any workweek in which Plaintiffs worked at least 40 hours, Defendant's failure to pay Plaintiffs at one and one half times their regular rate of pay, for hours in excess of 40, violated the Fair Labor Standards Act, 29 U.S.C. §§206, 207, 215, 216. As a result of such violations, Plaintiffs, and those similarly situated, are entitled to the damages, fees and expenses as set out in the

Fair Labor Standards Act, 29 U.S.C. § 216.

14. Defendants' failure to pay wages due was willful.

15. As a direct and proximate result of Defendants' failure to pay wages, its hourly employees, including Plaintiffs, have suffered damages in the form of lost wages and lost use of such wages.

16. All hourly employees of Defendants are similarly situated such that this case should be certified for a collective action under 29 U.S.C. § 216(b).

WHEREFORE, Plaintiffs pray that:

- a. They be awarded compensatory damages;
- b. They be awarded liquidated damages as permitted by law;
- c. The court award Plaintiffs and the class they represent pre-judgment and post-judgment interest as permitted by law; and
- d. The court award Plaintiffs and the class members such other and further relief, including costs and attorneys fees allowed under applicable law, as may be necessary and appropriate

Dated: July 17, 2009

Respectfully submitted,

**YOUTZ & VALDEZ, P.C.**

/s/ BP Milstein

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